

EXHIBIT 2

KATHY NUEBEL KOVARIK - 08/03/2018

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO
- - - - -x
CRISTA RAMOS, et al., :
Plaintiffs, : Case No.
v. : 3:18-cv-1554-
KIRSTJEN NIELSEN, et al., : EMC
Defendants. :
- - - - -x

VIDEOTAPED DEPOSITION OF
U.S. DEPARTMENT OF HOMELAND SECURITY
By and Through Its Corporate Designee
KATHY NUEBEL KOVARIK
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Job No.: LA-185448
Pages 1 - 289
Reported By: Joan V. Cain

1 after you provide that to him?

12:32:09

2 A He may have edits, questions. He may ask
3 for updated statistics because by that time it may
4 be stale or old and he sends his edits back through
5 our executive secretariat or electronically through
6 me or both. At which point my team, including my
7 subject matter experts, my senior advisor, and
8 myself would adjudicate those comments, make
9 changes, and send it back.

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10 Q So he may have edits that he sends back and
11 comments that he sends back and it gets adjudicated
12 by you, your senior advisor -- is that Mr. Law?

12:32:41

12:32:44

12:32:48

13 A Yes.

12:32:51

14 Q -- and who else?

12:32:51

15 A And my subject matter experts, the three
16 that I mentioned.

12:32:53

12:32:55

17 Q Okay. And then it gets sent back to him
18 for either final sign-off or further edits?

12:33:02

12:33:04

19 A Right. Sometimes we might go back and
20 forth. Sometimes he may approve after one round of
21 edits. And then he clears it for our executive
22 secretariat to then present it generally to the -- I
23 believe the executive secretariat sends it to the
24 department's executive secretariat, so we each have
25 our own. So the executive secretariat is

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1 responsible for the transfer of that document to 12:33:35
2 ensure version control. The Office of General 12:33:37
3 Counsel would then receive it and review it, ensure 12:33:41
4 it for legal sufficiency. They may have edits. 12:33:45
5 It's sent back through executive secretariat -- 12:33:49

6 Q Sorry. Office of Chief Counsel you said 12:33:53
7 or -- 12:33:56

8 A Office of General Counsel. 12:33:56

9 Q General counsel. Okay. And, sorry, what 12:33:57
10 is the role that they play and when? 12:34:00

11 A They review it for legal sufficiency. They 12:34:03
12 may provide edits. I adjudicate those in concert 12:34:06
13 with our Office of Chief Counsel. 12:34:11

14 Q And at what point does the Office of 12:34:14
15 General Counsel view that review? 12:34:18

16 A After the director clears it and approves 12:34:20
17 for it to be sent up to the department, it's 12:34:23
18 reviewed by Office of General Counsel for legal 12:34:25
19 sufficiency. 12:34:27

20 Q Okay. 12:34:28

21 A Generally. 12:34:30

22 Q And then is there further review within the 12:34:33
23 department, or does the secre- -- is it only 12:34:36
24 essentially at the level of secretary at that point 12:34:41
25 or something else entirely? So this -- at this 12:34:43

1 point there's been reviews from various sources, 12:34:46
2 including Office of General Counsel, the director, 12:34:49
3 and the -- the earlier review methods that you 12:34:53
4 described. 12:34:58

5 A Yeah. 12:34:59

6 Q And then it's sent directly to the 12:34:59
7 secretary; is that correct? 12:35:01

8 A No. No. 12:35:01

9 Q Okay. 12:35:02

10 A So after we adjudicate comments with the 12:35:03
11 Office of General Counsel and we clear that and 12:35:05
12 everyone is -- is satisfied with the end document, 12:35:07
13 including our counsel and Office of General Counsel, 12:35:13
14 we then prepare it for the director to sign and 12:35:19
15 submit that to the department's front office, which 12:35:22
16 then there is another layer of review. 12:35:26

17 Q Before we get to that other layer of 12:35:30
18 review, you said that when everyone is satisfied, 12:35:34
19 then it's prepared for the director to sign. Who 12:35:36
20 is -- I mean, who is -- when you say everyone is 12:35:39
21 satisfied, do you mean everyone that you've 12:35:41
22 described, or are there other people that have to be 12:35:43
23 consulted in that decision? 12:35:46

24 A Everyone that I described, and -- and just 12:35:47
25 to make it clear that when I send it to the chief 12:35:50

1 A I believe at the time it was population of 12:44:10
2 potential TPS beneficiaries, depending on if it was 12:44:15
3 redesignated or newly designated. 12:44:22

4 Q Okay. So they'll ask clarifying questions. 12:44:24
5 Are there other things that they do in coming back 12:44:26
6 to you during this process? 12:44:28

7 A They may ask about the recommendation and 12:44:30
8 why we got to where we did. Generally, it's a 12:44:33
9 conversation just to understand country conditions. 12:44:36

10 Q And is that -- 12:44:41

11 A It's very rare -- it's usually a 12:44:43
12 paper-based review. I'm just saying it's not -- it 12:44:46
13 wouldn't be surprising if they asked questions. 12:44:50

14 Q Uh-huh. Are those questions usually over 12:44:52
15 e-mail or by phone or in person? 12:44:55

16 A It could be both. 12:44:57

17 Q From that group of people that you 12:45:02
18 described who's involved in the review process, who 12:45:04
19 do you communicate with most prior to the secretary 12:45:08
20 sign-off? 12:45:11

21 A Well, in my role, because I am Office of 12:45:13
22 Policy, I would communicate with the senior advisor, 12:45:17
23 and norm- -- I may also -- because I -- I help with 12:45:21
24 the adjudication of comments, I may -- may 12:45:28
25 communicate over e-mail with general counsel for 12:45:31

1 legal sufficiency issues.

12:45:34

2 Q Is there an in-person meeting with any
3 group of people after the director signs off --
4 after the CIS director signs off?

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12:45:47

12:45:52

5 A We touch base with the department just
6 mostly on process to say, hey, when is it coming,
7 but generally on the decision-making process, an
8 in-person meeting may be done between the secretary
9 and the director or the secretary and the chief of
10 staff and the senior advisor to discuss the decision
11 memo. It doesn't always happen, but it does happen.

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12 Q Mm-hmm. What -- what documents are
13 generally produced by the State Department during
14 the TPS determination process?

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12:46:39

15 A It is the attachment that you see on all
16 the decision memos. It is maybe a letter, a cover
17 letter along with an assessment.

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12:46:49

18 Q Sorry. When you say the -- the attachment
19 on the decision memos is the cover letter and
20 additional attachment is the cover letter?

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12:46:54

12:47:00

21 A From the Department of State, yeah.

12:47:02

22 Q And what are the attachments to the cover
23 letter from the Department of State?

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12:47:06

24 A So the Department of State will send over
25 its assessment, but the cover letter is a letter

12:47:13

12:47:15

1 Q Do you recall what it was? 12:48:29

2 A No. 12:48:30

3 Q Do you remember why it was included? 12:48:37

4 A It had to do with fraud -- fraud issues, 12:48:39
5 and TPS was mentioned in the cable. 12:48:48

6 Q Okay. Okay. So there's the documents that 12:48:50
7 have been provided by the State Department, 12:49:37
8 documents that have been provided by CIS, the review 12:49:38
9 with the advisor, the chief of staff, the deputy 12:49:43
10 director, general counsel of the department -- 12:49:46

11 A Mm-hmm. 12:49:50

12 Q -- there's maybe some consultation and back 12:49:50
13 and forth with you or your office. Is it generally 12:49:53
14 you or is it others in your office that are involved 12:49:55
15 in any -- responding to any questions that come up? 12:49:58

16 A The general counsel could talk to our chief 12:50:01
17 counsel because they work hand in hand on legal 12:50:03
18 issues, so they may talk. If I'm not available, the 12:50:05
19 senior advisor may call my senior advisor. 12:50:10

20 Q Mm-hmm. And then when will the -- well, 12:50:12
21 then what is provided ultimately to the secretary? 12:50:18

22 A One decision memo with attachments, and 12:50:20
23 those attachments vary like I mentioned. 12:50:23

24 Q Is it all of the things that you've 12:50:31
25 described with some variation? Is there anything 12:50:33

1 additional that is added to that?

12:50:35

2 A Well, it varies from country to country. I
3 generally laid out what is described in attachments.

12:50:37

12:50:40

4 Q Beyond the things that you've described
5 from the countries that are at issue here, are there
6 any additional documents that have been included in
7 those -- in the package? Is it fair to call that
8 the package that goes to the secretary?

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12:50:59

9 A Yes. We've had ten decisions. I'm sure
10 there are documents that maybe I'm not even thinking
11 of, but generally what I've laid out is what is
12 attached to a decision memo.

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12:51:05

12:51:07

12:51:09

13 Q Okay. If there were dissenting opinions
14 within the department or within CIS, would those be
15 included as well?

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12:51:13

12:51:16

16 A They may be packaged by the executive
17 secretariat for the secretary's folder. Sorry, but
18 I'm not privy to what is put in her folder, but in
19 the USCIS decision packet, that is what is normally
20 included, what I've said.

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12:51:27

12:51:30

12:51:36

21 Q Just to make sure that I'm clear on this
22 too, there is -- is there a separate USCIS decision
23 packet and a DHS decision packet, or when you're
24 talking about the decision packet, is that the same
25 thing maybe with additional things that are added in

12:51:38

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12:51:50

1 the process?

12:51:51

2 A Let me -- yeah, that's a good question. To
3 clarify, there's a USCIS decision packet. The
4 secretary may receive a packet with additional stuff
5 that I'm not aware of, but Office of General Counsel
6 may do a review of the legal sufficiency or provide
7 more background in a -- a legal background on TPS.

12:51:51

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12:52:01

12:52:06

8 Q Mm-hmm. And that's on the interpretation
9 of TPS, or what would that be on?

12:52:13

12:52:17

10 A I have never seen one so --

12:52:20

11 Q Okay. That stays amongst the general
12 counsel and the Office of Chief Counsel?

12:52:21

12:52:24

13 A That stays between the general counsel and
14 the secretary.

12:52:26

12:52:29

15 Q And once the decision packet goes to the
16 DHS secretary, what are the next steps?

12:52:40

12:52:46

17 A The secretary is very thorough. She reads
18 the decision packet. If she has questions, she'll
19 ask for a meeting and they do a meeting. In most
20 instances, there is a meeting that takes place to go
21 over that country's condition.

12:52:49

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12:52:58

12:53:04

12:53:09

22 Q Who -- sorry to interrupt. Who
23 participates in that meeting?

12:53:11

12:53:13

24 A It varies, but generally the director of
25 U.S. Citizenship and Immigration Service, the

12:53:14

12:53:20

1 same.

14:22:48

2 Q Okay. And that shift to sending the

14:22:48

3 Federal Register Notice to the OMB earlier, that was

14:22:55

4 a shift that you initiated?

14:22:57

5 A Yes.

14:22:58

6 Q When did you initiate that?

14:23:00

7 A I -- I believe it -- the first decision

14:23:08

8 that came when I was chief of the Office of Policy

14:23:09

9 was Haiti. I believe that it shifted after that

14:23:12

10 when we weren't sure what the decision was going to

14:23:22

11 be.

14:23:33

12 Q Did there have to be an approval for that

14:23:33

13 decision to not send the Federal Register Notice to

14:23:36

14 OMB earlier?

14:23:39

15 A No. I made that decision.

14:23:40

16 Q Were all stakeholders, including OMB but

14:23:53

17 also the other agencies, consulted at all in that

14:23:57

18 process -- in that shift in process?

14:23:59

19 A Yes. The Office of General Counsel was

14:24:02

20 consulted because they were used to seeing the

14:24:04

21 Federal Register Notice behind the decision memo.

14:24:06

22 Q And when you say Office of General Counsel,

14:24:09

23 do you mean the Office of General Counsel --

14:24:11

24 A At the department of Homeland Security.

14:24:12

25 Q -- at the Department of Homeland Security?

14:24:14

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Joan V. Cain, Court Reporter, the officer
3 before whom the foregoing deposition was taken, do
4 hereby certify that Kathy Nuebel Kovarik personally
5 appeared before me on August 3, 2018 and was duly
6 sworn; that the foregoing transcript is a true and
7 correct record of the testimony given; that said
8 testimony was taken by me stenographically and
9 thereafter reduced to typewriting under my
10 direction; that reading and signing was not
11 requested; and that I am neither counsel for,
12 related to, nor employed by any of the parties to
13 this case and have no interest, financial or
14 otherwise, in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my notarial seal this 6th day of
17 August 2018.

18
19 My commission expires:

20 July 31, 2019
21 
22 _____

23 NOTARY PUBLIC IN AND FOR THE
24 DISTRICT OF COLUMBIA
25